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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

DAVID GILBERT SAFFRON a/k/a DAVID GILBERT and CIRCLE SOCIETY, CORP.,

Defendants.

Case No.

2:19-cv-01697-KJD-DJA

[PROPOSED] *EX PARTE* STATUTORY RESTRAINING ORDER

Plaintiff, Commodity Futures Trading Commission ("Commission" or "CFTC"), has filed a Complaint for Injunctive Relief, Restitution, Disgorgement and Civil Monetary Penalties, and has moved, pursuant to Section 6c(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13a-1(a) (2012), and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 65(b), for an *ex parte* statutory restraining order enjoining David Gilbert Saffron a/k/a David Gilbert ("Saffron") and his business entity, Circle Society, Corp. ("Circle Society") (collectively, "Defendants"), from destroying, altering, or disposing of, or refusing to permit authorized representatives of the Commission to inspect and copy any books or records or other documents, including electronically stored information ("ESI"), and further enjoining Defendants from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion for a statutory restraining order, and finds that:

1. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (providing that U.S.

district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by act of Congress). In addition, Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), provides that U.S. district courts possess jurisdiction to hear actions brought by the Commission for injunctive relief or to enforce compliance with the Act whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

2. Venue lies properly with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants resided and transacted business in this District, and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, or are about to occur in this District.

3. There is good cause to believe that from at least December 2017 through the present (the "Relevant Period"), Saffron has fraudulently solicited and accepted at least $11 million worth of Bitcoin ("BTC") and United States Dollars ("USD") (BTC, together with USD, "funds") from no fewer than fourteen members of the public to participate in an unregistered commodity pool (the "Pool"). Beginning on or about September 6, 2018 through the present, Saffron, individually and as principal and agent of Circle Society, has fraudulently solicited members of the public to participate in a commodity pool operated by Circle Society. Through the use of in-person meetings, word-of-mouth, instant messaging services such as Telegram, podcasts, and websites operated by Saffron, Defendants solicited actual and prospective participants to pool their funds with that of other participants for the purported purpose of trading off-exchange binary option contracts on foreign currency ("forex") and cryptocurrency pairs,

among other things. Defendants made omissions and misrepresentations of material facts, including guaranteeing returns of up to 300% in three weeks.

4. Defendants misappropriated participants' funds by soliciting funds for trading and then holding participants' funds in Saffron's personal E-Wallet instead of segregating the funds in a pool account and using them for trading on behalf of the Pool. The Bitcoin tendered by participants to Defendants were held in Saffron's personal E-Wallet and were never placed in any cryptocurrency or other trading accounts for the benefit of the Pool. Similarly, at least some of the USD tendered by participants to Defendants were converted to Saffron's personal use and not placed in any cryptocurrency or other trading accounts for the benefit of the Pool. Defendants also misappropriated some portions of participants' funds by providing Bitcoin to certain participants as purported trading "profits," in order to create the illusion that the Pool was trading, and trading profitably.

5. Defendants did not disclose to actual and prospective participants that they misappropriated and used their funds for Saffron's personal use.

6. Throughout the Relevant Period, Saffron, individually and as principal and agent of Circle Society, knew that he was making omissions and misrepresentations to actual and prospective participants when he touted his trading experience and guaranteed returns of up to 300%. In reality, Saffron knew or acted with reckless disregard of the fact that binary options trading on cryptocurrency and forex is risky, with no guaranteed returns. As the holder of the E-wallet and BTC addresses used to collect funds from participants and four known cryptocurrency trading accounts, Saffron had personal knowledge of the amount of funds accepted from participants, the disposition of those funds, as well as the absence of trading on behalf of participants as promised. Finally, Saffron knew or acted in reckless disregard of the facts when

he failed to disclose that neither he nor Circle Society were registered with the Commission as required, and Defendants were therefore operating an unlawful business enterprise.

7. At no time did Defendants operate the Pool as a legal entity separate from that of the pool operator, nor did Defendants ever open a pooled trading account for the benefit of participants. Defendants also commingled the property of the Pool with Saffron's own personal funds.

8. During the Relevant Period, Saffron, without registering with the Commission as a commodity pool operator ("CPO"), solicited, accepted, and received funds from the public while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in commodity futures contracts. During the Relevant Period, Saffron failed to register with the Commission as a CPO.

9. From September 6, 2018 through the present, Circle Society, without registering with the Commission as a CPO, solicited, accepted, and received funds from the public while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in commodity futures contracts. From September 6, 2018 through the present, Circle Society failed to register with the Commission as a CPO.

10. From September 6, 2018 through the present, Saffron, without registering with the Commission as an associated person ("AP") of Circle Society, solicited, accepted, and received funds for participation in the Pool. From September 6, 2018 through the present, Saffron failed to register with the Commission as an AP of a CPO.

11. By virtue of this conduct and the conduct further described herein, Defendants engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4c(b),

4m(1), and 4*o*(1)(A)-(B) of the Act, 7 U.S.C. §§ 6c(b), 6m(1), and 6*o*(1)(A)-(B) (2012), and Commission Regulations 4.20(a)(1), (b) and (c), and 32.4, 17 C.F.R. §§ 4.20(a)(1), (b), (c), 32.4 (2019). In addition, Saffron has engaged, is engaging, or is about to engage in acts and practices in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012).

12. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for participants in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of the Court.

13. There is good cause for the Court to impose a restraining order prohibiting Defendants and their agents, servants, employees, attorneys, and other persons who are in active concert or participation with them, from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property owned, controlled, managed, or held by or on behalf of, or for the benefit of Defendants.

14. There is good cause for entry of an order prohibiting Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successors or assigns thereof, from destroying records and/or denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to all such books and records.

15. Absent the entry of this statutory restraining order, Defendants are likely to dissipate or transfer assets and destroy business records.

16. This is a proper case for granting a statutory restraining order *ex parte* to preserve the *status quo*, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, therefore the Court orders as follows:

DEFINITIONS

For the purposes of this Order, the following definitions apply:

17. The term "assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

18. The term, "document" is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes, but is not limited to, all writings or printed matter of any kind, including without limitation: records, correspondence, memoranda, notes, rolodexes, address books, diaries, statistics, e-mail, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice or intra-office communications, telephone message slips, offers, notations of conversations, bulletins, drawings, plans, computer printouts, computer input or output, teletypes, facsimiles, invoices, worksheets, ledger books, books of accounts, and all drafts, alterations, modifications, changes and amendments of any of the foregoing. The term "document" also includes graphs, charts, photographs, phonographic record, audio and video recordings, computer records, and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. The term "document" also refers to each and every document in your actual or constructive

possession, including but not limited to: (i) all documents within your custody or control of any of your present or former agents, employers, employees, partners, and (ii) all documents which you have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate document within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

19. "Defendants" refer to David Gilbert Saffron a/k/a David Gilbert ("Saffron") and Circle Society, Corp. ("Circle Society"), and/or any person insofar as he or she is acting in the capacity of an officer, agent servant, employee, and/or attorney of Defendants and any person or entity who receives actual notice of this Order by personal service or otherwise insofar as he, she or it is acting in concert or participation with Defendants.

RELIEF GRANTED

I. RESTRAINING ORDER PROHIBITING THE TRANSFER, REMOVAL, DISSIPATION AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that:

20. Defendants and their agents, servants, employees, assigns, attorneys, person and/or entity in active concert or participation with them, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including Defendants' assets held outside the United States; ***provided however,*** that if Defendants control any accounts in which there are any open trading positions in contracts, agreements, or transactions in

commodity futures, options on commodity futures, and/or foreign currency or options relating thereto, Defendants shall forthwith close out or liquidate any and all such open positions.

21. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of, or subject to, access by Defendants.

22. The assets affected by this Order shall include both existing assets and assets acquired after the effective date of this Order.

II. MAINTENANCE OF AND ACCESS TO BUSINESS RECORDS

IT IS HEREBY ORDERED that:

23. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, are restrained from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business activities or business or personal finances of Defendants.

III. BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

24. As Plaintiff Commission is an agency of the United States of America which has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. 13a-1(b) (2012), this restraining order is granted without bond. Accordingly, the Commission need not post a bond.

IV. INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

25. Representatives of the Commission shall be immediately allowed to inspect the books, records, and other documents of Defendants and their agents, relating or referring to the business activities or business or personal finances of Defendants including, but not limited to, paper documents, ESI, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

26. Defendants shall, within twenty-four hours (24) of the service of this Order upon them, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords for any encrypted ESI in the possession or control of Defendants that relate to the business activities or business or personal finances of Defendants. Defendants shall, within twenty-four (24) hours of the service of this Order upon them, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desk top computers, laptop computers and/or other computers owned and/or used by them in connection with their business. The schedule(s) required by this Order shall include at a minimum the make, model, location, and a description of each computer or device, along with the name of the person(s) primarily assigned to use the computer or device. In order to preserve the data for future discovery, the Commission is authorized to make an electronic, digital or hard copy of all data contained on each computer or device.

27. **Within five (5) business days following the service of this Order**, Defendants shall provide the Commission immediate access to all records of Defendants held by financial institutions located within or outside the territorial United States by signing the Consent to

Release of Financial Records attached to this Order and submitting same to counsel for the Commission.

V. SERVICE OF ORDER AND ASSISTANCE OF UNITED STATES MARSHALS SERVICE AND OTHER LAW ENFORCEMENT

IT IS FURTHER ORDERED that:

28. Copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants or that may be subject to any provision of this Order.

29. Timothy J. Mulreany, Danielle Karst, George Malas, Jeremy Christianson, and representatives of the United States Marshal Service and the Federal Bureau of Investigation, and/or private process servers are specially appointed by the Court to effect service.

30. The United States Marshal's Service and other any other cooperating federal, state or local law enforcement officials, are hereby authorized to accompany and assist the Commission's representatives outside and inside the premises of Defendants, as well as to secure the premises, in the service and execution of this Order and to undertake such efforts as are reasonably necessary to ensure that the Commission's representatives have an unimpeded right to inspect and copy books, records and documents as set forth above wherever such books, records, and documents are believed by the Commission to be located.

VI. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that:

31. Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court of the District of Nevada and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to

Timothy J. Mulreany, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and **not** by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

VII. FORCE AND EFFECT

IT IS FURTHER ORDERED that:

32. This Statutory Restraining Order shall expire on ____________________, 2019, unless before that time the court, for good cause, extends it for a like period, and this Court retains jurisdiction of this matter for all purposes.

IT SO ORDERED:

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UNITED STATES DISTRICT JUDGE

DATED: ______________________